THE HON'BLE SMT JUSTICE T.MEENA KUMARI

&

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

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MONDAY, THE 25th DAY OF JULY, 2005

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WRIT APPEAL NO : 911 of 2000

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Between:

The APSRTC, Musheerabad, Hyderabad

and another .. Appellants/Respondents

And

Md. Jani Miya ..Respondent/Writ petitioner

THE HON'BLE SMT JUSTICE T.MEENA KUMARI

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WRIT APPEAL NO : 911 of 2000

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JUDGMENT: (Per Hon'ble Smt. Justice T. Meena Kumari)

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This writ appeal is filed by the appellants aggrieved by the order, dated 25-04-2000 in W.P.No.324 of 2000, under which the learned Single Judge allowed the writ petition.

The appellants herein are the respondents in the writ petition. Originally, the

writ petition was filed by the writ petitioner seeking a direction in the nature of writ of mandamus declaring the action of the respondents in not providing the alternative employment to the petitioner as illegal, arbitrary and contrary to the Section 47 of the Persons With Disabilities Equal Opportunities Protection of Rights and Full Participation Act, 1995 (for short 'the Act') and consequently to direct the respondents to reinstate him into the alternative post in terms of the provisions of the law reported in 1999(1) ALD Page 632 with all consequential benefits.

The case of the writ petitioner is that he was appointed as Conductor in the respondents-Corporation in the year 1986 and was allotted to Narketpally Depot. On 2-4-1993, the respondents-Corporation removed him from service on the allegation of irregular absence. On appeal, the appellate authority directed the respondent-Corporation to reinstate the petitioner into service as Conductor by imposing a penalty of deferment of annual increment for a period of one year, without cumulative effect on his future increments. Accordingly, the petitioner was reinstated into service and he reported to duty to the Depot Manager, Kodad Depot. In spite of issuing posting orders, the petitioner was subjected to medical examination and after medical examination, the medical officer certified that the petitioner was unfit to A-II Category due to defective vision in his left eye. Then, he filed W.P.No.1594 of 1998 and obtained interim direction to the respondents to consider his case. The respondents, by proceedings, dated 18-6-1998 considered and rejected the case of the petitioner for alternate employment stating that he was directly appointed to the post of Conductor and did not held any post previously and that there is no provision to consider his case for alternative employment as per the Rules. The writ petition No.1594 of 1998 was disposed of on 4.8.1998 directing the respondents to consider the case of the writ petitioner, if he is entitled to alternative post, on his application. The writ petitioner made applications to the respondents-Corporation on 6.3.1999, 10.9.1999 and 3.12.1999 to consider his case under the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act, 1995 but the respondents did not provide any employment so far. Hence, he filed the writ petition.

The learned Single Judge having observed that relying on the decision of this Court in SYED SHA MUSEBULLA ALVI VS. SECRETARY, GENERAL ADMINISTRATIVE DEPARTMENT, SECRETARIAT, HYDERABAD (1999 (1) ALD, 632) wherein it was held that once Section 47 of the Act 1 of 1996 applies to the

Corporation, it has to consider the case of the petitioner, allowed the writ petition with a direction to the first respondent to consider the claim of the writ petitioner de novo, in the light of the provisions of Section 47 of the Act 1 of 1996, within a period of three months from the date of receipt of a copy of that order.

The learned counsel for the appellants contends that the respondent has neither pleaded nor proved that he is suffering from not less than 40% disability and as such, he is not entitled to seek protection of the Act 1 of 1996. He contends that the writ petitioner did not make any claim regarding the application of the Act 1 of 1996 in his earlier W.P.No.1594 of 1998. He further contends that the writ petitioner has got remedy to approach the Chief Commissioner appointed under Section 57 of the Act, and as per Section 58 of the Act, the Chief Commissioner shall take steps to safeguard the rights and facilities made available to persons with disabilities, and hence, the order under appeal is liable to be set aside.

On the other hand, the learned Counsel for the writ petitioner reiterating the contentions that were urged before the learned Single Judge, contends that the learned Single Judge is justified in directing the respondents to consider his claim under the provisions of Section 47 of the Act 1 of 1996.

Perused the material available on record and the order under appeal.

On a reading of the Act 1 of 1996, it is clear that the Chief Commissioner, who appointed under Section 57 of the Act, deals with the matters relating to persons with disabilities. In view of the same, we see force in the contention of the learned Counsel for the appellants and we feel it appropriate to modify the order under appeal and direct the appellants/respondents to remit the case of the respondent/writ petitioner to the Chief Commissioner, who deals the matters relating to Persons with Disabilities.

With the above modification, the writ appeal is disposed of. However, the appellants- Corporation is directed to remit the case of the writ petitioner to the Chief Commissioner, within a period of one month from the date of receipt of a copy of this Order. On receipt of the same, the Chief Commissioner shall pass appropriate orders, after affording opportunity to both the parties, within a period of three months from the date of receipt of the matter. No costs.

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Justice T. Meena Kumari

Justice P. Lakshmana Reddy

Date: 25th July, 2005

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